

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

MICROSOFT'S ANSWER TO
MOTOROLA SOLUTIONS, INC.,
MOTOROLA MOBILITY AND
GENERAL INSTRUMENT'S
COUNTERCLAIMS

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Microsoft Corporation ("Microsoft"), by and through its undersigned counsel, for its Answer to the Counterclaims asserted by Motorola Solutions, Inc. (formerly, Motorola, Inc.), Motorola Mobility, Inc. and General Instrument Corporation (together, "Motorola") (Dkt. No. 68), states as follows:

MICROSOFT'S ANSWER TO MOTOROLA
SOLUTIONS, INC., MOTOROLA MOBILITY AND
GENERAL INSTRUMENT'S COUNTERCLAIMS - 1

No. C10-1823-JLR

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL., (206) 623-1700 FAX, (206) 623-8717

1 1. Microsoft admits the allegations of Paragraph 1.

2 2. Microsoft admits the allegations of Paragraph 2.

3 3. Microsoft admits the allegations of Paragraph 3.

4 4. Microsoft admits the allegations of Paragraph 4.

5 5. The allegations of Paragraph 5 assert a legal conclusion to which no response is
6 required. To the extent a response is deemed to be required, Microsoft denies that Motorola's
7 claims are meritorious, that Motorola has been damaged, that Motorola is entitled to the relief
8 it seeks, and that the Court has jurisdiction over Motorola's First and Second Counterclaims
9 under the laws of the United States concerning actions relating to patents, 28 U.S.C. §1338(a)
10 and 28 U.S.C. § 1331.

11 6. Microsoft admits that this court has personal jurisdiction over the parties.
12 Microsoft denies any remaining allegations of Paragraph 6.

13 7. Microsoft admits the allegations of Paragraph 7.

14 8. Microsoft admits the allegations of Paragraph 8.

15 9. Microsoft admits the allegations of Paragraph 9.

16 10. Microsoft admits that technologies used to allow a consumer electronics device
17 to interoperate with other devices that are widely accepted by industry members are often
18 described in standards adopted by a recognized SDO and denies the remaining allegations of
19 Paragraph 10.

20 11. Microsoft admits that SDOs generally have adopted rules, policies, and
21 procedures addressing the disclosure and licensing of patents in relation to the practice of the
22 standards under consideration, and that these rules, policies and procedures are generally set
23 out in each SDO's intellectual property rights policy (which speaks for itself), and denies the
24 remaining allegations of Paragraph 11.

1 12. Microsoft admits that a SDO's intellectual property rights policy (which will
2 speak for itself) often requests, requires, or seeks, under delineated circumstances, a
3 commitment from its members or those participating in the specific standardization activity to
4 agree to make a license to essential patents or essential patent claims available on RAND terms
5 and conditions, admits that the RAND rate appropriate for a given patent will depend on a
6 number of considerations and denies the remaining allegations of Paragraph 12.

7 13. Microsoft admits that the external materials referenced in Paragraph 13 speak
8 for themselves, and denies the remaining allegations of Paragraph 13.

9 14. Microsoft denies the allegations of Paragraph 14.

10 15. Microsoft admits the allegations of Paragraph 15.

11 16. Microsoft admits the allegations of Paragraph 16.

12 17. Microsoft admits the allegations of Paragraph 17.

13 18. Microsoft admits that certain IEEE members are engaged in research and
14 development of wireless technologies, and may own intellectual property rights relating to
15 elements of such technologies, and that, in adopting a specific standard, IEEE takes into
16 account that parts of the standards may be covered by such intellectual property rights and has
17 policies and procedures relating to disclosure and licensing of such intellectual property rights.
18 Microsoft denies the remaining allegations of Paragraph 18.

19 19. Microsoft admits that IEEE has adopted policies and procedures relating to the
20 adoption of IEEE standards that take into account intellectual property rights associated with
21 the technology relevant to said standards and relating to the licensing of such intellectual
22 property rights. Microsoft denies any remaining allegations of Paragraph 19.

1 20. Microsoft admits that participants in the standardization process often submit
2 Letters of Assurance that identify a participant's licensing position. Microsoft denies any
3 remaining allegations of Paragraph 20.

4 21. Microsoft admits the allegations of Paragraph 21.

5 22. Microsoft admits that Clause 6 of the IEEE-SA Standards Board Bylaws relates
6 to the disclosure and licensing of essential patent claims, that Clause 6 speaks for itself, and
7 denies any remaining allegations of Paragraph 22.

8 23. Microsoft admits that the IEEE Standards Board Bylaws speak for themselves,
9 and that Motorola has quoted a portion of a version of the IEEE bylaws, denies that the quoted
10 section is complete, and denies the remaining allegations of Paragraph 23.

11 24. Microsoft admits that a party asserting that it holds essential patent claims can
12 submit a Letter of Assurance to the IEEE, that the content of the Letter of Assurance
13 referenced in Paragraph 24 speaks for itself, and denies any remaining allegations of Paragraph
14 24.

15 25. Microsoft admits that the content of the Letter of Assurance referenced in
16 Paragraph 25 speaks for itself, admits that Motorola purports to quote a portion of a version of
17 the IEEE Bylaws, denies that the quoted section is complete, and denies any remaining
18 allegations of Paragraph 25.

19 26. Microsoft admits that the Bylaws and other external materials referenced in
20 Paragraph 26 speak for themselves, admits that Motorola purports to quote a portion of a
21 version of the Bylaws, denies that the quoted section is complete, and denies any remaining
22 allegations of Paragraph 26.

1 27. Microsoft admits that the IEEE-SA Operations Manual speaks for itself, admits
2 that Motorola purports to quote a portion of a version of the Operations Manual, denies that the
3 quoted language is complete, and denies any remaining allegations of Paragraph 27.

4 28. Microsoft admits that the IEEE-SA Operations Manual speaks for itself, and
5 denies the remaining allegations of Paragraph 28.

6 29. Microsoft admits that Motorola has submitted Letters of Assurance pursuant to
7 which it committed to grant licenses to its patents that it asserts are essential to implementing
8 the 802.11 standard on RAND terms and conditions. Microsoft denies any remaining
9 allegations of Paragraph 29.

10 30. Microsoft admits the allegations of Paragraph 30.

11 31. Microsoft admits the allegations of Paragraph 31.

12 32. Microsoft admits the allegations of Paragraph 32.

13 33. Microsoft admits that ISO and IEC are described on their respective websites as
14 set forth in Paragraph 33, but Microsoft does not have knowledge or information sufficient to
15 form a belief as to the truth of the allegations, and therefore denies them.

16 34. Microsoft admits that ITU, ISO, and IEC have cooperated with respect to the
17 development and publishing of certain standards, and denies any remaining allegations of
18 Paragraph 34.

19 35. Microsoft admits the allegations of Paragraph 35.

20 36. Microsoft admits the allegations of Paragraph 36.

21 37. Microsoft admits that certain ITU-T members may be engaged in research and
22 development of wireless technologies, and may own intellectual property rights relating to
23 different elements of such technologies, and that in adopting a specific standard, ITU-T takes
24 into account that parts of the standard may be covered by such intellectual property rights and
25

1 has policies and procedures relating to licensing of such intellectual property rights, and denies
2 the remaining allegations of Paragraph 37.

3 38. Microsoft admits that ITU-T has adopted policies and procedures relating to the
4 adoption of ITU-T standards, the incorporation of intellectual property rights into said
5 standards, and licensing of intellectual property rights. Microsoft denies any remaining
6 allegations of Paragraph 38.

7 39. Microsoft admits that participants in the standardization process often submit
8 Patent Statement and Licensing Declaration Forms, and/or General Patent and Licensing
9 Declaration Forms that identify a participant's licensing position. Microsoft denies any
10 remaining allegations of Paragraph 39.

11 40. Microsoft admits that the ITU, ISO, and IEC publish the "Common Patent
12 Policy for ITU-T/ITU-R/ISO/IEC," that the Common Patent Policy speaks for itself, that
13 Motorola purports to quote a portion of a version of the Common Patent Policy, denies that the
14 quoted language is complete, and denies the remaining allegations of Paragraph 40.

15 41. Microsoft admits that the Common Patent Policy speaks for itself, and denies
16 the remaining allegations of Paragraph 41.

17 42. Microsoft admits that the referenced form speaks for itself and admits that
18 Motorola and its predecessors have submitted Patent Statements and Declaration Forms in
19 relation to ITU-T Rec. H.264. Microsoft denies the remaining allegations of Paragraph 42.

20 43. Microsoft admits the allegations of Paragraph 43.

21 44. Microsoft denies the allegations of the first sentence of Paragraph 44, admits the
22 allegations of the second sentence, denies the allegations of the third sentence, admits that the
23 Xbox 360 Wireless Adapter supports the a, b, and g amendments to the IEEE 802.11
24
25

1 specification and is designed to function with certain versions of the Xbox 360, and denies any
2 remaining allegations of Paragraph 44.

3 45. Microsoft admits that it announced the Xbox 360 Wireless N Adapter in the
4 United States in November 2009, retailing for \$99.99, admits that the Xbox 360 Wireless N
5 Adapter supports the a, b, g, and n amendments to the IEEE 802.11 specification and is
6 designed to function with certain versions of the Xbox 360, admits that at one time the Xbox
7 360 Arcade console retailed at \$199, and denies any remaining allegations of Paragraph 45.

8 46. Microsoft admits the allegations of the first and second sentence of Paragraph
9 46, denies Motorola's characterization of the facts of the third sentence, admits that the Xbox
10 360 4GB Console product page speaks for itself, that certain versions of the Xbox 360 console
11 have, at certain times, retailed for \$199.99, and denies any remaining allegations of Paragraph
12 46.

13 47. Microsoft denies the allegations of Paragraph 47.

14 48. Microsoft admits that it sells products and licenses software that include
15 encoders and decoders that support the H.264 standard, and denies the remaining allegations of
16 Paragraph 48.

17 49. Microsoft admits that the referenced materials speak for themselves, denies that
18 the language Motorola quotes from the materials is complete, states that the first sentence
19 contains an opinion to which no response is necessary, and denies the remaining allegations of
20 Paragraph 49.

21 50. Microsoft admits that its Amended and Supplemental Complaint speaks for
22 itself, that Motorola has failed to offer Microsoft a license to Motorola's allegedly essential
23 patents on RAND terms and conditions, and denies the remainder of the allegations of
24 Paragraph 50.

1 51. Microsoft denies the allegations of Paragraph 51.

2 52. Microsoft admits that it received a demand letter from Motorola dated October
3 21, 2010, the content of which speaks for itself, denies that the terms and conditions stated in
4 Motorola's demand letter were RAND, and denies the remaining allegations of Paragraph 52.

5 53. Microsoft admits that it filed a complaint against Motorola on November 9,
6 2010, and denies the remaining allegations of Paragraph 53.

7 54. Microsoft denies the allegations of Paragraph 54.

8 55. Microsoft admits that its Amended and Supplemental Complaint speaks for
9 itself, that Motorola has failed to offer Microsoft a license to Motorola's allegedly essential
10 patents on RAND terms and conditions, and denies the remainder of the allegations of
11 Paragraph 55.

12 56. Microsoft denies the allegations of Paragraph 56.

13 57. Microsoft admits that it received a demand letter from Motorola dated October
14 29, 2010, the content of which speaks for itself, denies that the terms and conditions stated in
15 Motorola's demand letter were RAND, and denies the remaining allegations of Paragraph 57.

16 58. Microsoft admits that it filed a complaint against Motorola on November 9,
17 2010, and denies the remaining allegations of Paragraph 58.

18 59. Microsoft denies the allegations of Paragraph 59.

19 60. Microsoft admits that Motorola filed actions in the Western District of
20 Wisconsin and the ITC bearing the referenced case numbers, denies that any of said actions are
21 meritorious, and denies the remaining allegations of Paragraph 60.

22 **FIRST COUNTERCLAIM**

23 (Declaratory Judgment That Motorola Has Not Breached Any RAND Obligations)

24 61. Microsoft incorporates by reference its response to Paragraphs 1-60 as though
25 set forth herein.

73. Paragraph 73 describes the relief sought by Motorola and does not consist of allegations of fact. No response thereto is required from Microsoft. To the extent a response is required, Microsoft denies that Motorola is entitled to the declaration or any of the other relief it seeks, and denies any remaining allegations of Paragraph 73.

74. Paragraph 74 describes the relief sought by Motorola and does not consist of allegations of fact. No response thereto is required from Microsoft. To the extent a response is required, Microsoft denies that Motorola is entitled to the declaration or any of the other relief it seeks, and denies any remaining allegations of Paragraph 74.

75. Paragraph 75 describes the relief sought by Motorola and does not consist of allegations of fact. No response thereto is required from Microsoft. To the extent a response is required, Microsoft denies that Motorola is entitled to the declaration or any of the other relief it seeks, and denies any remaining allegations of Paragraph 75.

Microsoft denies that Motorola is entitled to any of the relief it requests in its Prayer for Relief, or any relief whatsoever. Microsoft denies any and all allegations of Motorola's Counterclaims that were not specifically admitted above.

AFFIRMATIVE DEFENSES

Microsoft asserts the following Affirmative Defenses against Motorola's Counterclaims and reserves the right to further amend its responses as additional information becomes available:

1. Motorola's Counterclaims fail to state claims upon which relief can be granted.

2. Motorola's Counterclaims are redundant and duplicative of the issues raised by Microsoft's claims and counterclaims, and by Motorola's affirmative defenses thereto.

3. Motorola's First and Second Counterclaims are barred by the doctrine of waiver.

4. Motorola's First and Second Counterclaims are barred by the doctrine of estoppel.

5. Motorola's First and Second Counterclaims fail because Motorola failed to satisfy a condition precedent.

6. Motorola's First and Second Counterclaims are barred by the doctrine of unclean hands.

DATED this 9th day of March, 2012.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By s/ Arthur W. Harrigan, Jr.
Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

By s/ T. Andrew Culbert
T. Andrew Culbert, WSBA #35925
David E. Killough, WSBA #40185
MICROSOFT CORPORATION
1 Microsoft Way
Redmond, WA 98052
Phone: 425-882-8080
Fax: 425-869-1327

David T. Pritikin, *Pro Hac Vice*
Richard A. Cederoth, *Pro Hac Vice*
Douglas I. Lewis, *Pro Hac Vice*
John W. McBride, *Pro Hac Vice*
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
Phone: 312-853-7000
Fax: 312-853-7036

Brian R. Nester, *Pro Hac Vice*
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: 202-736-8000
Fax: 202-736-8711

Counsel for Microsoft Corporation

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

Ralph Palumbo
Philip S. McCune
Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

/s/ Linda Bledsoe
LINDA BLEDSOE